

# EXHIBIT 4

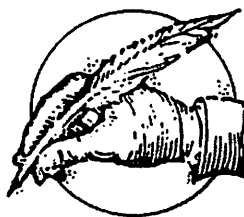
**In The Matter Of:**  
*Dustin Erwin v.*  
*Christopher McDermott, et al.*

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*John Ferraro*  
*August 21, 2012*

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<p>1 UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF MASSACHUSETTS 3 C.A. No. 1:11 CV 11328 4 ----- 5 DUSTIN ERWIN, 6 Plaintiff, 7 v. 8 CHRISTOPHER McDERMOTT, DARVIN ANDERSON, 9 THE CITY OF BROCKTON and FRANK'S OF BROCKTON, 10 INC., 11 Defendants. 12 ----- 13 RULE 30(b) (6) DEPOSITION OF FRANK'S OF 14 BROCKTON, INC., GIVEN BY JOHN FERRARO, DESIGNEE, 15 a witness called by and on behalf of the 16 Plaintiff, taken pursuant to Federal Rules of 17 Civil Procedure, before Daria L. Romano, RPR, 18 CRR and Notary Public in and for the 19 Commonwealth of Massachusetts, at Sinsheimer &amp; 20 Associates, 92 State Street, Boston, 21 Massachusetts, on Tuesday, August 21, 2012, 22 commencing at 10:13 a.m. to 11:26 a.m. 23 24</p>	<p>1 I N D E X 2 Deposition of: Page 3 JOHN FERRARO 4 By Mr. Sinsheimer 4, 76 5 By Mr. Phaff 67 6 7 8 E X H I B I T S 9 No. Page 10 1 Notice of taking deposition per 11 Rule 30(b) (6) 10 12 2 Floor hosts daily work schedule 13 barbacks daily work schedule 19 14 3 Servers daily work schedule 15 hostess daily work schedule 19 16 4 Bartender weekly work schedule 19 17 5 Rub-girls daily work schedule 19 18 19 20 21 *Original exhibits retained by Mr. Sinsheimer 22 23 24</p>
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<p>1 A P P E A R A N C E S: 2 SINSHEIMER &amp; ASSOCIATES 3 (by Robert S. Sinsheimer, Esq.) 4 92 State Street 5 Boston, Massachusetts 02109 6 (617) 722-9950 7 for the Plaintiff. 8 9 DAVID BERMAN, ESQ. 10 100 George P. Hassett Drive 11 Medford, Massachusetts 02155 12 (781) 395-7520 13 davidberman2@verizon.net 14 for Frank's of Brockton, Inc. 15 16 LOUISON, COSTELLO, CONDON &amp; PFAFF, LLP 17 (by Stephen C. Phaff, Esq.) 18 101 Summer Street 19 Boston, Massachusetts 02110 20 (617) 439-0305 21 sphaff@lccplaw.com 22 for the City of Brockton, 23 Christopher McDermott and 24 Darvin Anderson</p>	<p>1 P R O C E E D I N G S 2 3 JOHN FERRARO 4 5 a witness called for examination by counsel for 6 the Plaintiff, being first duly sworn, was 7 examined and testified as follows: 8 9 D I R E C T E X A M I N A T I O N 10 B Y M R. S I N S H E I M E R: 11 Q. State your full name, please. 12 A. John Michael Ferraro. 13 Q. Would you spell it for the record, 14 please. 15 A. Last name F-E-R-R-A-R-O, first name 16 John, J-O-H-N. 17 Q. Give me your date of birth, please? 18 A. February 4, 1965. 19 Q. That makes you 47? 20 A. 47. 21 Q. Social Security number? 22 A. XXX-XX-7014. 23 Q. I'm going to ask -- 24 M R. B E R M A N: Please put in only the</p>

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<p>1 last four digits and blank out the rest.</p> <p>2 <b>BY MR. SINSHEIMER:</b></p> <p>3 Q. I'm going to ask you a question.</p> <p>4 Don't answer until you consult with your</p> <p>5 counsel.</p> <p>6 I want to know either your home</p> <p>7 address or whether you allow Mr. Berman to</p> <p>8 accept service throughout this case, whether or</p> <p>9 not you're remaining -- well, you're not a</p> <p>10 party -- at any time whether you allow</p> <p>11 Mr. Berman to accept service?</p> <p>12 <b>MR. BERMAN:</b> As long as I am</p> <p>13 counsel for defendant Frank's of Brockton, I</p> <p>14 shall accept service on behalf of Mr. Ferraro if</p> <p>15 there's any need to serve him, as long as he's</p> <p>16 employed by Frank's of Brockton.</p> <p>17 <b>BY MR. SINSHEIMER:</b></p> <p>18 Q. Let me just get your home address,</p> <p>19 please.</p> <p>20 A. 208 Tamarack, T-A-M-A-R-A-C-K, Lane,</p> <p>21 Abington, Mass.</p> <p>22 Q. Any plans to move in the near future?</p> <p>23 A. No.</p> <p>24 Q. Listen to how I phrase this in respect</p>	<p>1 and I know you have nothing in front of you so</p> <p>2 it's not a memory quiz, it's just a sense of</p> <p>3 where your thinking is, is there anything at all</p> <p>4 that you can recall that you -- strike it.</p> <p>5 As you sit here today without anything</p> <p>6 in front of you, is there anything that you read</p> <p>7 in Mr. Caswell's deposition that you recall</p> <p>8 differently?</p> <p>9 A. The one thing I remember is that he</p> <p>10 said that the officer asked Mr. Erwin 10 times</p> <p>11 or something like that to leave, and it wasn't</p> <p>12 quite that many times.</p> <p>13 Q. Your memory is that Mr. Erwin left</p> <p>14 without having been asked that many times?</p> <p>15 A. Not 10. It was more like five or six.</p> <p>16 Q. Okay. We'll come back to that.</p> <p>17 I'm going to ask you a few background</p> <p>18 questions.</p> <p>19 Have you ever been deposed before?</p> <p>20 A. No.</p> <p>21 Q. Give us a summary of your formal</p> <p>22 education, dates and times starting with high</p> <p>23 school.</p> <p>24 A. High school, '79 to '83, Norwell High</p>
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<p>1 of the attorney-client privilege.</p> <p>2 Other than speaking to Mr. Berman or</p> <p>3 anyone in his office, did you do anything to</p> <p>4 prepare for today's testimony?</p> <p>5 A. No.</p> <p>6 Q. Did you read anything?</p> <p>7 A. I read Frank Caswell's deposition</p> <p>8 about a month ago.</p> <p>9 Q. And that was given to you by</p> <p>10 presumably your counsel?</p> <p>11 A. By Frank.</p> <p>12 Q. By Frank personally?</p> <p>13 A. Mm-hmm.</p> <p>14 Q. Did you read anything else?</p> <p>15 A. No.</p> <p>16 Q. And that was, you say, three or four</p> <p>17 weeks ago?</p> <p>18 A. Three or four weeks ago, yes.</p> <p>19 Q. As you read it, did something stand</p> <p>20 out as inaccurate in any way?</p> <p>21 A. Not that I remember. There were a few</p> <p>22 things that may have not been totally right on,</p> <p>23 but it was pretty close.</p> <p>24 Q. Well, as you sit here today, tell me,</p>	<p>1 School in Norwell, Mass.</p> <p>2 Q. Okay.</p> <p>3 A. College, four years, Westfield State</p> <p>4 College, graduated in '87, from '83 to '87.</p> <p>5 Q. Any post graduate?</p> <p>6 A. No, that was it.</p> <p>7 Q. Starting with your current job, what</p> <p>8 do you do for a living?</p> <p>9 A. I am general manager of the Foxy Lady</p> <p>10 in Brockton, Frank's of Brockton, Inc.</p> <p>11 Q. So your employer technically is</p> <p>12 Frank's of Brockton, Inc.?</p> <p>13 A. Yes, d/b/a Foxy Lady.</p> <p>14 Q. Is that on your paycheck?</p> <p>15 A. Yes.</p> <p>16 Q. How long have you had that job?</p> <p>17 A. 13 years.</p> <p>18 Q. That takes us back to roughly --</p> <p>19 A. '99.</p> <p>20 Q. And what did you do prior to that?</p> <p>21 A. Restaurants. I worked for Papa Gino's</p> <p>22 from '80 to '92. Then I worked for Pizzeria Uno</p> <p>23 approximately '93 to '95. Then I was general</p> <p>24 manager of Fudruckers in Downtown Boston from</p>

<p style="text-align: right;">Page 9</p> <p>1 approximately '95 to the beginning of '99.</p> <p>2 Q. So I have four different jobs: Papa</p> <p>3 Gino's, Pizzeria Uno, Fudruckers and then this</p> <p>4 one?</p> <p>5 A. Correct.</p> <p>6 Q. Were you ever terminated from a job?</p> <p>7 A. No.</p> <p>8 Q. Did you have any major discipline at</p> <p>9 any job?</p> <p>10 A. Never.</p> <p>11 Q. Have you ever served in United States</p> <p>12 military?</p> <p>13 A. No.</p> <p>14 Q. You can talk to your lawyer about this</p> <p>15 if you want before you answer.</p> <p>16 Have you ever been arrested?</p> <p>17 A. No.</p> <p>18 Q. Do you have any criminal record of any</p> <p>19 kind?</p> <p>20 A. No.</p> <p>21 Q. So you understand that you're here</p> <p>22 because of an incident that occurred at the Foxy</p> <p>23 Lady in Brockton regarding my client, Dustin</p> <p>24 Erwin?</p>	<p style="text-align: right;">Page 11</p> <p>1 Q. Now, in order to have a 30(b)(6)</p> <p>2 witness, the lawyer that asked for it, in this</p> <p>3 case me, has to provide a list of topics in</p> <p>4 advance so you know what they are.</p> <p>5 I'm going to ask you to turn to the</p> <p>6 third page of Exhibit A, and you can see there's</p> <p>7 an extensive list of topics.</p> <p>8 A. Okay.</p> <p>9 Q. And quite frankly, that's just lawyers</p> <p>10 lawyering. What I'd like you to do, though,</p> <p>11 and -- you haven't seen this before I think you</p> <p>12 told me?</p> <p>13 A. No, I have not.</p> <p>14 Q. Just go down it and tell me if there's</p> <p>15 any topic in here that you can't testify to, and</p> <p>16 then we'll go forward from there. You can just</p> <p>17 do it by number if you want.</p> <p>18 A. Okay.</p> <p>19 (Pause)</p> <p>20 A. Number 16, what is the plaintiff's</p> <p>21 Rule 26? What is that?</p> <p>22 Q. Well --</p> <p>23 MR. BERMAN: If you don't know, you</p> <p>24 can't testify to it.</p>
<p style="text-align: right;">Page 10</p> <p>1 A. Yes.</p> <p>2 Q. Do you understand that you are a</p> <p>3 30(b)(6) witness?</p> <p>4 MR. BERMAN: I don't know if you</p> <p>5 understand that or not.</p> <p>6 MR. SINSHEIMER: I'm going to mark</p> <p>7 this as Exhibit 1, please.</p> <p>8 (Exhibit 1 marked</p> <p>9 for identification)</p> <p>10 BY MR. SINSHEIMER:</p> <p>11 Q. I'm going to show you a copy of a</p> <p>12 document and ask you, have you ever seen this</p> <p>13 before?</p> <p>14 A. No.</p> <p>15 Q. All right. Here's what we're going to</p> <p>16 do. A 30(b)(6) deposition requires the deponent</p> <p>17 to testify on behalf of an entity.</p> <p>18 Do you understand that concept?</p> <p>19 A. Mm-hmm.</p> <p>20 Q. So you would be testifying as a</p> <p>21 witness that is speaking for the entity Frank's</p> <p>22 of Brockton, Inc.</p> <p>23 Do you understand that concept?</p> <p>24 A. Yes.</p>	<p style="text-align: right;">Page 12</p> <p>1 THE WITNESS: I just don't know</p> <p>2 what it means.</p> <p>3 BY MR. SINSHEIMER:</p> <p>4 Q. Okay. That's a fair answer.</p> <p>5 A. Okay.</p> <p>6 Q. I could tell you, maybe we'll do that</p> <p>7 off the record, but the general rule at a</p> <p>8 deposition is I ask the questions, and you</p> <p>9 answer them. I don't mean to be rude, but I'm</p> <p>10 not here to answer questions. Your lawyer can</p> <p>11 answer your questions.</p> <p>12 A. Okay.</p> <p>13 Q. It's not my place to answer your</p> <p>14 questions. But I won't ask you any questions</p> <p>15 related to number 16.</p> <p>16 That's the one that sort of stands out</p> <p>17 because there's terminology in there with which</p> <p>18 you are unfamiliar, correct?</p> <p>19 A. Yes.</p> <p>20 Q. Now, take away the Schedule A and let</p> <p>21 me ask you sort of in more layperson's terms.</p> <p>22 Are you the point person at Frank's of</p> <p>23 Brockton that's designated to deal with this</p> <p>24 litigation?</p>



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1 A. Yes.  
2 Q. And apart from having been there on  
3 the night in question -- excuse me. Were you  
4 there on the night in question?  
5 A. Yes.  
6 Q. Apart from that, have you done  
7 anything to investigate any of the allegations  
8 or any of the background information?  
9 A. No.  
10 Q. So you would be testifying  
11 simultaneously from your own observations and on  
12 behalf of the company, correct?  
13 A. Yes.  
14 Q. And do you consent to testify on  
15 behalf of the entity?  
16 A. Yes.  
17 Q. You've had a chance to --  
18 **MR. BERMAN:** There's something this  
19 witness has said that I find a little troubling,  
20 I'm sure it's an innocent enough statement, that  
21 he is the point person to testify on behalf of  
22 Frank's of Brockton.  
23 The point person for most of the  
24 subjects, and this has been made clear in E

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1 mails between counsel, is Mr. Caswell.  
2 This witness, however, has knowledge  
3 superior to Mr. Caswell because of his firsthand  
4 knowledge about item 10; namely, those things  
5 referring to Christopher McDermott.  
6 Mr. Caswell would have no independent  
7 knowledge of that. He made it clear that he  
8 wasn't present when the events occurred and this  
9 witness was present.  
10 And this has all been clarified in  
11 exchange of E mails. I want to put that on the  
12 record.  
13 **MR. SINSHEIMER:** Sure.  
14 Mr. McDermott is actually Schedule A, number  
15 five. Number 10 has to do with the K-9 unit.  
16 **MR. BERMAN:** I'm sorry. 10, "Any  
17 and all information in Frank's custody related  
18 to or concerning Christopher McDermott."  
19 **MR. SINSHEIMER:** We're looking at a  
20 different document. Okay. Thank you. I'm glad  
21 you cleared that up.  
22 **BY MR. SINSHEIMER:**  
23 Q. You certainly have some information  
24 about the night in question from your personal

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1 observations?  
2 A. I believe so, yes.  
3 Q. Okay. What time did you get to work  
4 that night?  
5 A. 6:45, approximately, which is usually  
6 when I come in.  
7 Q. And what were you doing?  
8 A. That night?  
9 Q. Yes.  
10 A. I was the general manager in charge of  
11 the shift.  
12 Q. What does that mean in terms of actual  
13 onsite presence and function?  
14 A. Just making sure the shifts run  
15 smoothly. I do all the cashing in for the  
16 night, make sure all the employees show up for  
17 work on time and are doing their designated  
18 jobs.  
19 Q. How many employees were there that  
20 particular night?  
21 A. Was it a Friday night?  
22 **MR. BERMAN:** Friday night into  
23 Saturday morning.  
24 A. Okay. Probably around 30.

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1 Q. Let me show you this document.  
2 Do you recognize that?  
3 A. Yes.  
4 Q. What is it?  
5 A. That's one of our schedules. It's  
6 changed since, but that's what it looked like at  
7 the time.  
8 Q. Does this mean, if I were to read  
9 this, that on Friday, August 10th, someone named  
10 Jason Buttimer, that that person was working  
11 from five o'clock to closing on Friday the 10th?  
12 A. Correct.  
13 Q. And what is RO? The next one is a guy  
14 named John Byron.  
15 A. Request office.  
16 Q. Fair enough.  
17 And then the other two at the top  
18 there are 6:30 to closing?  
19 A. Yes.  
20 Q. And then if we go to barbacks.  
21 What does PM floor host mean?  
22 A. He is a floor host for the evening.  
23 Q. So, in other words, even though he --  
24 A. He has several jobs that he does.

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1 That's under the barback schedule. That's to  
2 make sure he looks at the floor host schedule.  
3 Q. I see. He's also up there?  
4 A. Correct.  
5 Q. Same guy?  
6 A. Yes.  
7 Q. All right. There's less people  
8 because there's overlap. In other words -- got  
9 it.  
10 A. Whatever the hours are, those people  
11 were scheduled if they actually have hours next  
12 to their name.  
13 Q. What I meant is if I'm looking at  
14 the -- if I was trying to count all the people  
15 there that night, I wouldn't want to count  
16 Carlton and Gagnon twice?  
17 A. No.  
18 Q. They were not barbacks that night,  
19 they were floor hosts?  
20 A. Correct.  
21 Q. So there were three barbacks, Door,  
22 Jassett and Milton?  
23 A. Two barbacks at night. That other one  
24 is during the day, the day shift.

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1 Q. Got it. He is gone by 6:30?  
2 A. Yes.  
3 Q. And that's self-explanatory.  
4 Okay. Just put it on the record. It  
5 may seem self-explanatory to you, put on the  
6 record what a floor host is and what a barback  
7 is.  
8 A. Barback takes care of stocking the  
9 bar, anything the bartender needs during their  
10 shift. They take care of other things, like  
11 they clean the bathroom, any spills or anything  
12 like that, they take care of any of that stuff.  
13 Q. Low persons on the totem pole, pretty  
14 much?  
15 A. Yeah, I would say so.  
16 Q. Okay.  
17 A. The floor host takes IDs, they just  
18 monitor the club to make sure there's no  
19 problems. And if anybody has any questions  
20 about seating or any such questions, they'll  
21 answer that for them.  
22 Q. And there were these four floor hosts  
23 there that night?  
24 A. Three.

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1 Q. Three, sorry. One of them requested  
2 off?  
3 A. Mm-hmm.  
4 MR. SINSHEIMER: Mark that as  
5 Exhibit 2, please.  
6 (Exhibit 2 marked  
7 for identification)  
8 MR. SINSHEIMER: And mark this as  
9 Exhibit 3.  
10 (Exhibit 3 marked  
11 for identification)  
12 MR. SINSHEIMER: Exhibit 4, please.  
13 (Exhibit 4 marked  
14 for identification)  
15 MR. SINSHEIMER: Exhibit 5, please.  
16 (Exhibit 5 marked  
17 for identification)  
18 BY MR. SINSHEIMER:  
19 Q. So I gather then, to save time, that  
20 these numbers in all of these Exhibits 3, 4 and  
21 5, they mean the same things in all of them?  
22 A. Yes.  
23 Q. All right. So would you just continue  
24 with the definitions, go right through Exhibits

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1 3, 4 and 5 and tell me what's a server, what's a  
2 hostess and what's a bartender and what's a  
3 rub-girl?  
4 A. Sure. A server is a waitress, another  
5 word for waitress.  
6 Hostess is the front door girl who is  
7 at the register collecting entrance fees.  
8 Q. I see.  
9 So if we look on this particular  
10 night, August 10th, it's the same, Nicole Avery,  
11 although she's hired as a hostess, she is  
12 working as a server?  
13 A. Nicole Avery, she actually worked the  
14 day shift that day.  
15 Q. All right. It says a.m. server clear  
16 as day.  
17 A. Right.  
18 Q. A.m. means a.m., p.m. clock?  
19 A. Right.  
20 Q. Got it.  
21 A. The shifts run 11:30 to 6 for the day  
22 shift and 6 to close or 6:30 to close for the  
23 night shift for those particular employees.  
24 Q. The night shifts there must be more

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<p>1 lucrative for receiving pay pretty much?</p> <p>2 A. Yes.</p> <p>3 Q. And mixes and matches, is that how it</p> <p>4 works?</p> <p>5 A. Mix and match?</p> <p>6 Q. They have some of each?</p> <p>7 A. Yes. It depends on their</p> <p>8 availability. Every employee has different</p> <p>9 availabilities.</p> <p>10 Q. Sure.</p> <p>11 Is seniority a factor at all?</p> <p>12 A. Not really.</p> <p>13 Q. Hostess, explain that role for me.</p> <p>14 A. Again, they sit at the front door.</p> <p>15 They just greet the customer when they come in</p> <p>16 the door, collect their admission fee.</p> <p>17 Basically that's it.</p> <p>18 They certainly look to make sure that</p> <p>19 the customer looks like the person in the ID if</p> <p>20 they took the ID.</p> <p>21 Sometimes if the floor host goes in</p> <p>22 the club to go to the bathroom or something,</p> <p>23 they'll take IDs for a few minutes.</p> <p>24 Q. Trade off?</p>	<p>1 girls just to make sure they're aware of their</p> <p>2 stage sets coming up and things like that.</p> <p>3 They'll help them out with anything they need.</p> <p>4 Q. A house mom?</p> <p>5 A. That's what it's called, yeah.</p> <p>6 Q. And the house mom, does she report to</p> <p>7 you?</p> <p>8 A. Yes.</p> <p>9 Q. Is there an intentional segregation</p> <p>10 between the entertainers and what might be</p> <p>11 described as the more routine restaurant/bar</p> <p>12 kind of staff?</p> <p>13 A. Not really.</p> <p>14 Q. Prior to your seeing or becoming</p> <p>15 involved in any way with Dustin Erwin, would it</p> <p>16 be fair to say that it was a routine Saturday</p> <p>17 night at the Foxy Lady -- Friday night, excuse</p> <p>18 me, on August 10th?</p> <p>19 A. Yes.</p> <p>20 Q. At some point you became aware of the</p> <p>21 presence of a person named Dustin Erwin?</p> <p>22 A. Well, I didn't know his name.</p> <p>23 Q. You didn't know his name at the time?</p> <p>24 A. I didn't know his name until about a</p>
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<p>1 A. Yes.</p> <p>2 Q. Number four, at the same time can I</p> <p>3 assume that bartender means what it generically</p> <p>4 means in the public domain?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. And number five, rub-girl,</p> <p>7 you're going to have to explain that to me.</p> <p>8 A. We have girls that go around and give</p> <p>9 back rubs --</p> <p>10 Q. Okay.</p> <p>11 A. -- to customers.</p> <p>12 Q. What about the dancers, I don't see</p> <p>13 them on here at all?</p> <p>14 A. They aren't listed here, and that's</p> <p>15 why I said there were probably 30 people working</p> <p>16 that night. It's actually probably closer to 35</p> <p>17 now that I look at this schedule.</p> <p>18 Q. Okay.</p> <p>19 A. The entertainer schedule is not here.</p> <p>20 Q. Okay. Is that managed by someone</p> <p>21 other than the general manager? Is that like a</p> <p>22 completely separate deal?</p> <p>23 A. I manage them. They do have a house</p> <p>24 mom which is down in the dressing room with the</p>	<p>1 year ago.</p> <p>2 Q. Fair enough.</p> <p>3 But just to save time, there was an</p> <p>4 incident that resulted in a court date, right?</p> <p>5 A. Yes.</p> <p>6 Q. And the incident involved a person</p> <p>7 named Dustin Erwin?</p> <p>8 A. Yes.</p> <p>9 Q. You didn't know his name until well</p> <p>10 after the incident is what you're testifying to?</p> <p>11 A. Correct.</p> <p>12 Q. But you remember the incident?</p> <p>13 A. Yes.</p> <p>14 Q. You remember what he looked like?</p> <p>15 A. No.</p> <p>16 Q. You don't remember what he looked like</p> <p>17 at all?</p> <p>18 A. Not now, no.</p> <p>19 Q. When's the first time you saw</p> <p>20 Mr. Erwin at all that evening?</p> <p>21 A. I saw him after several complaints</p> <p>22 from employees, and they pointed him out to me.</p> <p>23 Q. Can you name the employees who</p> <p>24 complained about him?</p>



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<p>1 A. No, I can't.</p> <p>2 Q. Was it the same employee complaining,</p> <p>3 or was it more than --</p> <p>4 A. Several.</p> <p>5 Q. Several different ones?</p> <p>6 A. Several.</p> <p>7 Q. What does several mean? Can you give</p> <p>8 me your best estimate?</p> <p>9 A. Four or five.</p> <p>10 Q. Would they be people that are on these</p> <p>11 Exhibits 2, 3 and 4 --</p> <p>12 A. No.</p> <p>13 Q. -- and 5?</p> <p>14 A. No.</p> <p>15 Q. And why is that?</p> <p>16 A. They were entertainers that were</p> <p>17 complaining about him.</p> <p>18 Q. You're sure about that?</p> <p>19 A. Positive.</p> <p>20 MR. SINSHEIMER: I was going to</p> <p>21 save you some trouble, Mr. Berman, but I think I</p> <p>22 need the entertainer list as well.</p> <p>23 MR. BERMAN: If we have one, I</p> <p>24 don't see why not.</p>	<p>1 A. Yes.</p> <p>2 Q. And you personally got involved in</p> <p>3 searching for items?</p> <p>4 A. Yes, Frank Caswell asked me to look</p> <p>5 for it.</p> <p>6 Q. All right. Fair enough.</p> <p>7 Did he ever actually show you a piece</p> <p>8 of paper that's referred to as a document</p> <p>9 request?</p> <p>10 A. No.</p> <p>11 Q. What did he say?</p> <p>12 A. He asked me if I could try to find the</p> <p>13 schedules from that particular date. And I</p> <p>14 found what I could, and I could not find the</p> <p>15 entertainer schedule.</p> <p>16 Q. Where did you look?</p> <p>17 A. We have a drawer that we have a pile</p> <p>18 of old schedules in it, and these were there,</p> <p>19 and the entertainer schedule was not.</p> <p>20 Q. And what you did provide, Exhibits 2,</p> <p>21 3 and 4 that's the universe, there wouldn't be</p> <p>22 anybody else?</p> <p>23 A. That's it for these employees.</p> <p>24 Q. In other words, the functions, there's</p>
Page 26	Page 28
<p>1 THE WITNESS: I don't believe we</p> <p>2 do.</p> <p>3 BY MR. SINSHEIMER:</p> <p>4 Q. Maybe I asked this -- I'm trying to</p> <p>5 get you out of here fast, I swear, and I think</p> <p>6 you can tell it's sincere -- I asked you if they</p> <p>7 were treated in some kind of different way. Are</p> <p>8 they scheduled differently?</p> <p>9 A. They have their own schedule. It's on</p> <p>10 a big sheet because there's so many people.</p> <p>11 And what happened to that, I don't</p> <p>12 know, but I do remember when we searched for</p> <p>13 these, we found them, but we did not find -- it</p> <p>14 was three years later --</p> <p>15 Q. No one's criticizing. You can only</p> <p>16 turn over what you have. But I'm allowed to ask</p> <p>17 questions why I don't have stuff that might have</p> <p>18 been produced.</p> <p>19 You were personally involved in the</p> <p>20 document production?</p> <p>21 A. Yes.</p> <p>22 Q. Just yes or no, you received some</p> <p>23 information from your counsel about what we were</p> <p>24 looking for?</p>	<p>1 no other function other than the entertainers?</p> <p>2 A. No, those are them.</p> <p>3 Q. Do you remember the name of the house</p> <p>4 mom who was there that night?</p> <p>5 A. I don't.</p> <p>6 Q. How long do the house moms tend to</p> <p>7 stay employed?</p> <p>8 A. We've had pretty much the same ones</p> <p>9 for a few years now. Tammy has been there for a</p> <p>10 long time, and it's possible she may have been</p> <p>11 there that night, but I don't know.</p> <p>12 Q. Give me Tammy's full name?</p> <p>13 A. Tamara Arruda.</p> <p>14 Q. And how long has she been a house mom?</p> <p>15 A. 10 years.</p> <p>16 Q. How many house moms are generally</p> <p>17 there on a Friday or Saturday night?</p> <p>18 A. Just one.</p> <p>19 Q. So it's quite possible it was Tammy</p> <p>20 Arruda?</p> <p>21 A. She may have been.</p> <p>22 Q. You are not committing to it, but you</p> <p>23 agree with me it's quite likely?</p> <p>24 A. Possible.</p>

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<p>1 Q. Fair enough.</p> <p>2 How many different ones are there?</p> <p>3 A. There's right now three or four, four.</p> <p>4 Q. And how do they decide what shifts</p> <p>5 they're working -- strike it.</p> <p>6 Who decides what shifts they work?</p> <p>7 A. They work it out between themselves.</p> <p>8 That's one thing that we don't do is schedule</p> <p>9 for them. They work it out amongst themselves.</p> <p>10 Q. So you could come on a given night and</p> <p>11 not know who the house mom is going to be?</p> <p>12 A. It's never happened where there wasn't</p> <p>13 one, so they work it out.</p> <p>14 Q. No, I meant -- but you wouldn't know</p> <p>15 which one?</p> <p>16 A. I'm pretty aware usually of who will</p> <p>17 be there. I see them at the beginning of the</p> <p>18 week, and I ask who will be there for the week,</p> <p>19 and they tell me.</p> <p>20 Q. How do they get paid?</p> <p>21 A. They get paid --</p> <p>22 MR. PHAFF: Is this the house moms?</p> <p>23 MR. SINSHEIMER: Yes.</p> <p>24 A. By check.</p>	<p>1 trying to put words in your mouth, you have no</p> <p>2 recollection of the name of any individual that</p> <p>3 actually complained about Dustin Erwin?</p> <p>4 A. No.</p> <p>5 Q. I am correct, in other words?</p> <p>6 A. You are correct.</p> <p>7 Q. But your recollection is that each</p> <p>8 person who complained was an entertainer as</p> <p>9 opposed to floor staff?</p> <p>10 A. Yes.</p> <p>11 Q. Do you remember the nature of any</p> <p>12 complaints?</p> <p>13 A. Yes.</p> <p>14 Q. What were the complaints?</p> <p>15 A. He was standing near the foxy stage.</p> <p>16 We have two stages on the main floor. One is</p> <p>17 the main stage, one is the foxy stage. The foxy</p> <p>18 stage is located close to the bar.</p> <p>19 And there were entertainers that were</p> <p>20 getting off stage and complaining to me that he</p> <p>21 was yelling words such as fucking slut, fucking</p> <p>22 whore and also throwing hard coins at them while</p> <p>23 they were onstage.</p> <p>24 Q. So he was pointed out to you?</p>
Page 30	Page 32
<p>1 Q. But I meant hourly?</p> <p>2 A. Hourly.</p> <p>3 Q. So they keep track of their own hours?</p> <p>4 A. Yes.</p> <p>5 Q. Punch a clock?</p> <p>6 A. They don't, no.</p> <p>7 Q. They come and go, and they're sort of</p> <p>8 on the honor system, for lack of a better</p> <p>9 phrase?</p> <p>10 A. Pretty much. I mean, I know what</p> <p>11 nights they're there, and they get paid for --</p> <p>12 their shift goes from 6 approximately until 2</p> <p>13 p.m. on a weekend, 6 to 1 on a weeknight, and I</p> <p>14 pay them for those hours.</p> <p>15 MR. BERMAN: You just said 6 p.m.</p> <p>16 to 2 p.m. --</p> <p>17 THE WITNESS: I meant 6 p.m. to 2</p> <p>18 a.m., sorry, on the weekend.</p> <p>19 BY MR. SINSHEIMER:</p> <p>20 Q. And you have no recollection of who</p> <p>21 the house mom was on August 10th?</p> <p>22 A. No.</p> <p>23 Q. And if I understood you correctly, but</p> <p>24 I want to be careful about this because I'm not</p>	<p>1 A. Yes.</p> <p>2 Q. Were you able to observe any of his</p> <p>3 friends?</p> <p>4 A. I knew he had friends there. There</p> <p>5 were a lot of people around the stage, and I</p> <p>6 knew he was talking to several people, but I</p> <p>7 couldn't exactly say who his friends were and</p> <p>8 who were just regular patrons of the club.</p> <p>9 Q. Would you agree with me that the Foxy</p> <p>10 Lady generates some patronage as a result of</p> <p>11 bachelor parties?</p> <p>12 A. I'm sorry, one more time?</p> <p>13 Q. I'll withdraw it and rephrase it.</p> <p>14 It's not uncommon for there to be</p> <p>15 bachelor parties at the Foxy Lady?</p> <p>16 A. That is not uncommon.</p> <p>17 Q. In fact, that would be an area of</p> <p>18 business that you would like to enhance or</p> <p>19 preserve?</p> <p>20 A. Not necessarily.</p> <p>21 Q. It's good business, let's put it that</p> <p>22 way, a big group comes in together?</p> <p>23 A. Yeah, it can be.</p> <p>24 Q. Is there any way of knowing how many</p>

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1 individuals were in a given group when there's a  
2 bachelor party?  
3 A. No.  
4 Q. Do you know as you sit here today one  
5 way or the other whether Mr. Erwin was part of a  
6 bachelor party?  
7 A. I knew he had a group. Whether or not  
8 it was a bachelor party, I wouldn't know that.  
9 Q. You don't know that one way or the  
10 other?  
11 A. No.  
12 Q. You don't recall any of the people  
13 that he was with as you sit here?  
14 A. No.  
15 Q. In fact, you say you don't recall his  
16 physical appearance either, if I understood you  
17 correctly?  
18 A. No. It's just too far when I found  
19 out about this.  
20 Q. I am correct you do not recall his  
21 appearance?  
22 A. No, I do not.  
23 Q. I'm trying to avoid the double  
24 negative. It's as simple as that.

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1 You don't recall?  
2 A. I don't recall.  
3 Q. I don't mean to beat it to death.  
4 What is the first action, if any, that  
5 you personally took with respect to these  
6 complaints?  
7 A. I approached, I guess it was  
8 Mr. Erwin. He was pointed out to meet by the  
9 employees, and I made him aware of the  
10 complaints and I told him, you know, if I got  
11 anymore of those complaints, he may be asked to  
12 leave the club.  
13 Q. What did he say?  
14 A. He just kind of turned away from me.  
15 He didn't really acknowledge it.  
16 Q. Did anybody else in his party say  
17 anything to you?  
18 A. No, not at that time, no.  
19 Q. What happened next, if anything?  
20 A. I went back -- I was kind of keeping  
21 an eye on him. I was standing at the front  
22 door. I did observe him throw a few more coins,  
23 and I could hear him yelling things at the girls  
24 onstage. There were a few more girls that got

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1 off stage and said he was previously abusing  
2 them verbally as well, and I witnessed it  
3 myself.  
4 I approached him again and told him  
5 again, I'm not going to tell you again, you will  
6 be asked to leave if this behavior keeps up. We  
7 just can't have it.  
8 He continued to do it because -- I was  
9 back out in the lobby. The next girl got off  
10 stage, came back to me and complained, and at  
11 that point --  
12 Q. Do you know her name?  
13 A. I don't.  
14 Q. Can you actually tell me the whole  
15 conversation between you and her?  
16 A. Again, same thing, he's calling us --  
17 calling all the girls names that are onstage  
18 and, again, whore, sluts was the predominant  
19 thing that people were saying.  
20 Q. What's the next thing that happened?  
21 A. At that point after that complaint I  
22 approached Mr. Erwin and told him it was time to  
23 go.  
24 Q. You personally?

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1 A. Yes.  
2 Q. Tell me everything you can recall  
3 about that encounter, please.  
4 A. I went up to him, asked him to leave,  
5 and he peacefully left. I didn't think there  
6 would be any problems. He walked right out.  
7 His friends, which was kind of weird,  
8 knew he was leaving. And usually if we ask  
9 someone to leave, their friends accompany them.  
10 It struck me as odd because they just let him  
11 go. They didn't really care.  
12 MR. SINSHEIMER: It just occurred  
13 to me, Mr. Berman, that we didn't put routine  
14 stipulations on because I'm trying to do you the  
15 courtesy of going so fast. Do you agree we have  
16 them non pro tunc?  
17 MR. BERMAN: Yes.  
18 MR. SINSHEIMER: Okay. So I'm  
19 moving to strike they didn't care because he  
20 doesn't know whether they care or not, but we'll  
21 save that for another time.  
22 MR. BERMAN: How right you are. I  
23 join in your motion.  
24 MR. SINSHEIMER: Routine objections

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1 save, he doesn't need a notary.  
2 **MR. BERMAN:** No, he doesn't need  
3 the notary. He can sign under the penalties of  
4 perjury when the transcript is ready.  
5 **BY MR. SINSHEIMER:**  
6 Q. This is all stuff we're supposed to do  
7 but we forgot because we're trying to get you  
8 out of here quickly.  
9 A. Okay.  
10 Q. Tell us the rest of the story.  
11 A. He left -- there's two entrances.  
12 There's a front foyer and then there's the  
13 little inside lobby with the register, and  
14 that's where they take the IDs. He walked out  
15 calmly, went outside.  
16 I don't know exactly what caused him  
17 to start acting the way he did, maybe it's  
18 because his friends didn't go out there and  
19 knowing he was going to be out there alone for a  
20 little while, I don't know, but I'm out in the  
21 front foyer near the doors, and Mr. McDermott  
22 was standing next to me, and he began to give us  
23 the finger with both hands and yelling fuck you.  
24 Q. Where was he when he gave you the

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1 finger?  
2 A. He was outside the front doors to the  
3 left side. If you're facing going out the door,  
4 to the left.  
5 Q. Okay.  
6 A. Mr. McDermott went outside, told him  
7 to calm down.  
8 **MR. PHAFF:** I'm sorry, is this the  
9 foyer area?  
10 **THE WITNESS:** Yes, the front foyer  
11 when you first walk into the building.  
12 A. Mr. McDermott approached him, told him  
13 he better stop, and he should leave the  
14 property.  
15 Mr. McDermott came back in. Next  
16 thing you know, maybe a few minutes later he's  
17 banging on the glass. I almost thought he was  
18 going to break the glass. Again, fuck you, fuck  
19 you.  
20 Again, Mr. McDermott went outside, and  
21 I heard Mr. Erwin say, What are you going to do,  
22 tough guy? Come on, tough guy. What are you  
23 going to do about it?  
24 Mr. McDermott again told him he had

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1 better leave the property. There was a chance  
2 he'd end up spending the night in jail.  
3 Mr. McDermott came back in. At that  
4 point I had gone into the club after I saw that  
5 incident and told his friends, I walked over to  
6 the group where he was sitting and I asked, Are  
7 you guys with the person that got asked to  
8 leave? And one of the people said yes.  
9 And I said, If I were you, I'd go out  
10 and try to talk some sense into your friend.  
11 He's acting like a complete buffoon outside, and  
12 there's a chance he might end up being arrested.  
13 So I walked back out with him. He got  
14 up and tried to talk some sense to him.  
15 Mr. Erwin was not having it. He actually pushed  
16 him aside. And I think his friend got upset and  
17 went back in the.  
18 So then we closed the door again  
19 hoping he'd settle down. He did not. Customers  
20 were coming in, he's yelling don't go in there,  
21 this place fucking sucks. You could hear him  
22 screaming it outside the door, and customers  
23 were coming in telling us he was saying so as  
24 well.

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1 At that point Mr. McDermott went  
2 outside again, and he's like, That's it, I'm not  
3 telling you anymore. He kind of walked with him  
4 down the ramp asking him to get off the  
5 property.  
6 Q. Did you actually see that?  
7 A. Yes, I did. I propped the door open,  
8 and I could hear it, and I could see it.  
9 Q. Were you standing in the doorway?  
10 A. Yeah. Mr. McDermott was walking down  
11 the ramp with him, and I was standing at the  
12 door on the top of the ramp.  
13 Q. Okay.  
14 A. They proceeded to walk towards  
15 Walgreens, down the ramp towards Walgreens. I  
16 kind of walked maybe three quarters of the way  
17 down the ramp.  
18 At that point he's stilling at him,  
19 Come on, fucking tough guy, what are you going  
20 to do about it?  
21 And Mr. McDermott put his hand out and  
22 said, I'm telling you now, and Mr. Erwin smashed  
23 his arm like really hard, and that's what set  
24 off the -- Mr. McDermott wrestled him to the

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1 ground, and he was trying to cuff him, and he  
2 wouldn't let him cuff him.  
3 At that point they were kind of  
4 rolling around on the ground, and I saw  
5 Mr. McDermott yell into his radio. They have  
6 some kind of code when they're in trouble, and  
7 about four police cars came flying down the road  
8 within minutes, and they were still rolling  
9 around the ground.  
10 Q. You saw all this personally?  
11 A. Yes, I did. Yes, I did.  
12 Q. Then what happened?  
13 A. The police cars pulled up. I believe  
14 one was a state police car, and I believe three  
15 city cars pulled up.  
16 And they screamed at me to go in the  
17 building, which I turned around. And of course  
18 I was still watching from the top of the ramp to  
19 see what was happening, but this ended up  
20 farther over towards Walgreens by the time they  
21 got there.  
22 At that point I saw them pull up, but  
23 that was pretty much it for me, when they told  
24 me to -- they really didn't want me there.

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1 MR. SINSHEIMER: Off the record.  
2 (Discussion off the record)  
3 BY MR. SINSHEIMER:  
4 Q. You went back inside when you were  
5 ordered to?  
6 A. I was looking out the window, but I  
7 didn't see much. There were a lot of police  
8 officers there, and they were kind of blocking  
9 my view.  
10 Q. Did you see a dog?  
11 A. I saw a dog get out of the car.  
12 Q. Did you see anything else the dog did?  
13 A. No, I didn't. I am aware of what  
14 happened, but I didn't see it.  
15 Q. What do you mean, you're aware of what  
16 happened?  
17 A. The dog supposedly bit Mr. Erwin.  
18 Q. How do you know that?  
19 A. Read it from the deposition.  
20 Q. You know it from the lawsuit?  
21 A. Right.  
22 Q. You don't know it from anything you  
23 observed that night?  
24 A. No.

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1 Q. You don't know it from anything  
2 anybody told that you particular night?  
3 A. Yes, I was told -- after all the  
4 reports were done and everything, I was made  
5 aware, I don't remember by who, that there may  
6 have been a dog that bit Mr. Erwin, the police  
7 dog. And I believe I heard something about  
8 pepper spray also.  
9 Q. When you say -- just now you used the  
10 phrase after all the reports were done --  
11 A. I remember all the police officers  
12 were walking around with notepads, and I believe  
13 they took my name too.  
14 Q. Did you write a report?  
15 A. No, I did not.  
16 Q. That wouldn't be part of your job?  
17 A. No.  
18 Q. No one asked you to?  
19 A. No.  
20 Q. Did they ever ask you to come down the  
21 station and give any kind of statement?  
22 A. No.  
23 Q. As far as you know, did anybody at the  
24 Foxy Lady write any kind of report?

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1 A. No.  
2 Q. As far as you know, did anybody at the  
3 Foxy Lady write any kind of statement at all  
4 about the matter?  
5 A. No.  
6 Q. Do you know if anybody sent anybody  
7 else an E mail about the matter?  
8 A. No.  
9 Q. Let me be clear about that. Is it  
10 that you don't know or that your testimony is no  
11 one did?  
12 A. I don't know of that happening.  
13 Q. Did you ever send somebody an E mail,  
14 hey, guess what happened at the club tonight?  
15 A. No.  
16 Q. Even informal like that?  
17 A. No.  
18 Q. Do you have an E mail account at  
19 the --  
20 A. Yes.  
21 Q. What is it?  
22 A. FoxyBrockton@AOL.com.  
23 Q. B-R-O-C-K-T-O-N?  
24 A. Yes, all one word.



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1 Q. So that's the E mail account for the  
2 business itself?  
3 A. Yes. It's Frank's personal E mail.  
4 We have a Web site, but it's not an E mail.  
5 Q. If I wanted to E mail you today, apart  
6 from the fact you might not take it --  
7 A. Frank checks that. I don't even go  
8 into it.  
9 Q. Where would it go, this address that  
10 you just gave me?  
11 A. Frank checks it daily, several times.  
12 I don't even get involved in it.  
13 Q. Did you ever use it to send outgoing E  
14 mails?  
15 A. No.  
16 Q. What about for scheduling?  
17 A. Scheduling the employees, if they need  
18 requests off, they leave me a note.  
19 Q. A handwritten note?  
20 A. Yes, a handwritten note.  
21 Q. Have you had the same E mail account  
22 for more than three years?  
23 A. Since the beginning, I believe he's  
24 had that.

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1 Q. And the beginning was?  
2 A. Since '99.  
3 Q. You used the name Mr. McDermott in  
4 your testimony, correct?  
5 A. Yes.  
6 Q. And obviously you're referring to a  
7 Brockton police officer named Christopher  
8 McDermott?  
9 A. Yes.  
10 Q. How long have you known that  
11 gentleman?  
12 A. I know him from -- he'll get assigned  
13 the details by the city every now and then.  
14 Probably six years maybe.  
15 Q. Do you know him from any way other  
16 than him being assigned details?  
17 A. No.  
18 Q. So from your perspective, he is an  
19 officer that shows up at the club sort of at  
20 random?  
21 A. Yes. We have nothing to do with him.  
22 He shows up. They schedule them, and they show  
23 up. When they get there, they don't check in  
24 with me. Sometimes I don't even know they've

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1 arrived.  
2 Q. Is there a written contract between  
3 the club and the city regarding --  
4 A. No.  
5 Q. How is it arranged that there would be  
6 details at the Foxy Lady?  
7 A. I believe when we opened, part of the  
8 licensing agreement required us to have details  
9 on Thursday, Friday and Saturday evenings. So  
10 it's pretty much known that that's when they  
11 will schedule people to show up at our club.  
12 Q. When was the licensing agreement  
13 entered into?  
14 A. I know they had about a three- or  
15 four-year process to get the license. I don't  
16 know the exact times. I wasn't involved with  
17 that.  
18 Q. Who was involved with that?  
19 Mr. Caswell?  
20 A. Yes.  
21 Q. You were hired after the license was  
22 in place?  
23 A. Yes. I started about three weeks  
24 after the club opened. I believe it was

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1 probably like August 1st of '99. The club had  
2 been opened for a few weeks.  
3 Q. In other words, you had no role in  
4 opening the club, you were still at one of  
5 the -- at Fudruckers, I guess?  
6 A. Correct.  
7 Q. And obviously you knew you were going  
8 to make a change, you gave your notice and so  
9 forth, but when you moved in, it was already up  
10 and running?  
11 A. Yes, it was.  
12 Q. Does the Foxy Lady have anything in  
13 the nature of an operations manual?  
14 A. No.  
15 Q. Nothing at all?  
16 A. No.  
17 Q. How are people taught how to do their  
18 jobs?  
19 A. On hand, on-the-job training.  
20 Q. Anything like a personnel manual?  
21 A. No.  
22 Q. How is the city and/or the individual  
23 officers compensated for their service at --  
24 A. We are billed by the City of Brockton.

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1 We send the City of Brockton a check, and they  
2 handle paying whoever worked.  
3 Q. What role do you understand the  
4 officers to play when there is an issue  
5 internally in the club?  
6 MR. PHAFF: Objection.  
7 MR. SINSHEIMER: Fair objection.  
8 But I'll hear the answer and see what happens.  
9 A. One more time on that?  
10 Q. I'll withdraw it.  
11 A. Okay.  
12 Q. If I understood your testimony,  
13 Mr. McDermott -- excuse me -- Mr. Erwin politely  
14 left after you asked him to?  
15 A. Yes.  
16 Q. Let me ask you in a simple way, what  
17 if he hadn't, what if he started swearing at  
18 you, what would have happened then?  
19 A. If he had caused a scene, I may have  
20 notified the police officer on duty which at  
21 that night was Mr. McDermott, and he probably  
22 would have taken care of it.  
23 Q. Okay. And is that something that's  
24 commonplace?

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1 A. No. We have very rare problems.  
2 Q. Let me rephrase it another way.  
3 When there are issues involving  
4 customers inside the club, do the police  
5 routinely get involved?  
6 A. No. If we are going to ask somebody  
7 to leave, we do usually notify the officer just  
8 in case. You never know.  
9 Q. Were there bouncers on duty on the  
10 evening in question?  
11 A. We don't refer to them as bouncers  
12 because they are not allowed to touch a person.  
13 That's the first thing they're told when they're  
14 hired, if you touch a person, it's your last  
15 night working, you'll be fired instantly. So we  
16 don't call them bouncers. That's something  
17 that's kind of a pet peeve of Frank's. We make  
18 sure they're called floor hosts because that's  
19 what they are. They're not bouncers.  
20 Q. Fair enough.  
21 Would it be fair to say essentially  
22 that's a marketing device, that you have what in  
23 other clubs might be called bouncers, but for PR  
24 type reasons you prefer to call them floor hosts

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1 and they're not allowed to touch anybody?  
2 A. I wouldn't say it's for PR reasons.  
3 Their job basically is just to notify me if  
4 there's any problems. They are not bouncers.  
5 Bouncers are people they have in clubs that  
6 actually grab people and throw them out the  
7 door.  
8 Q. Jason Buttimer, do you know him?  
9 A. Not any longer, no.  
10 Q. Do you remember him?  
11 A. Yes.  
12 Q. What was his height and weight?  
13 A. Maybe six feet, maybe 200.  
14 Q. How about John Byron?  
15 A. Maybe 5-10, 200.  
16 Q. Is he still there?  
17 A. No.  
18 Q. How about Adam Carlton?  
19 A. No, he is no longer there.  
20 Q. What is his height and weight?  
21 A. Maybe 5-6, 170.  
22 Q. How about Adam Gagnon?  
23 A. 5-10, maybe 175, 180.  
24 Q. Is he still there, Mr. Gagnon?

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1 A. Mr. Gagnon is.  
2 Q. Was he -- and he was on duty Friday,  
3 August 10th, according to Exhibit 2?  
4 A. Yes.  
5 Q. Are any of the entertainers that are  
6 still employed there -- strike it.  
7 Are any of the entertainers employed  
8 there today people who were there on August 10,  
9 2008?  
10 A. It's possible. But I have no idea who  
11 was on that night. There are several girls that  
12 were there at that time, not that many. The  
13 turnover on the entertainers is pretty high.  
14 Q. Do you personally as you sit here have  
15 any knowledge as to who owns the building,  
16 exactly which corporate entity?  
17 A. Frank's of Plymouth, I believe.  
18 Q. Are you sure?  
19 A. I'm not sure, no.  
20 Q. As you sit here right now, do you have  
21 any knowledge as to what entity owns the parking  
22 lot?  
23 A. I think it's Frank's of Plymouth, but  
24 I'm not positive.

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1 Q. Is the club operated by a different  
2 company than the ownership of the land?  
3 A. It's a confusing situation. I'm not  
4 involved with that stuff, so I'm not exactly  
5 positive. I believe the building is Frank's of  
6 Brockton -- no, no, the building is Frank's of  
7 Plymouth, the business is Frank's of Brockton.  
8 And I believe Frank's of Plymouth pays Frank's  
9 of Brockton rent payments of some kind.  
10 Q. Do you know in which corporate name  
11 the liquor license is held?  
12 A. Frank's of Brockton.  
13 Q. Are you sure of that?  
14 A. Yes.  
15 Q. Do you know if the land is owned by  
16 more than one entity?  
17 A. I'm not positive.  
18 Q. Do you know the name of the insurance  
19 carrier for the club?  
20 A. Hospitality Mutual, I believe.  
21 Q. Does Frank's of Brockton or -- does  
22 Frank Caswell have any interest in the  
23 insurance, meaning he is also an owner in the  
24 insurance company in any way?

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1 A. No.  
2 Q. Do you know who does own the insurance  
3 company?  
4 A. No.  
5 Q. Do you know whether it's publicly  
6 traded or privately held?  
7 A. No.  
8 Q. No idea?  
9 A. No idea.  
10 Q. I've covered this, but I want to  
11 reiterate. You personally never filled out any  
12 paperwork whatsoever related to that evening,  
13 correct?  
14 A. No.  
15 Q. In other words, I am correct?  
16 A. You are correct.  
17 Q. As you sit here right now, do you know  
18 whether any of the incidents you've described  
19 were recorded on any kind of video?  
20 A. They probably were. However, they  
21 loop after I believe 20 to 30 days, and where we  
22 didn't find out about this for quite a while,  
23 they taped over many, many, many times.  
24 Q. When you say "probably were," can you

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1 tell me where the video would have been?  
2 A. I don't believe that where -- over at  
3 Walgreens where the incident happened with  
4 Officer McDermott, I don't believe that would  
5 have been on there. The front door when he was  
6 acting up, that probably would have been.  
7 Q. Are there cameras on the property  
8 today?  
9 A. Yes.  
10 Q. Visible to the outside?  
11 A. Yes.  
12 Q. In other words, if I drove into the  
13 parking lot --  
14 A. There's globes.  
15 Q. Globes?  
16 A. Yeah, that are visible.  
17 Q. And those are the ones that would have  
18 recorded the activity we referred to earlier?  
19 A. Yes, if they were pointed in the right  
20 direction.  
21 Q. Fair enough. I'll rephrase it then.  
22 Assuming they were working as intended  
23 and targeted as intended, it would have?  
24 A. Yes.

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1 Q. And at any time did anybody from the  
2 Brockton Police Department come to you and say  
3 we'd like to get these records?  
4 A. I don't recall. But if they had in a  
5 timely manner, they obviously would have been  
6 given to them.  
7 Q. Do the police know where the cameras  
8 are?  
9 A. I don't believe so.  
10 Q. Is it open and obvious to anyone who  
11 looks?  
12 A. If you look up at the building, you'll  
13 see globes on each corner of the building. If  
14 you were looking for them, you could see them.  
15 Q. As you sit here right now, you don't  
16 have any knowledge one way or the other whether  
17 anything was recorded, correct, any actual  
18 knowledge?  
19 A. No.  
20 Q. I'm correct, in other words?  
21 A. You are correct.  
22 Q. You haven't seen such a video?  
23 A. No.  
24 Q. If I understand your testimony, your

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1 expectation would be that part of the incident  
2 would have been recorded?  
3 A. Yes.  
4 Q. Based on the location of the cameras  
5 where they normally are?  
6 A. Yes.  
7 Q. And the end of the incident would not  
8 have been recorded, at least not by cameras  
9 posted at the Foxy Lady?  
10 A. One more time on that?  
11 Q. Sure.  
12 Your testimony earlier was where it  
13 ended out at Walgreens parking lot would not  
14 have been recorded?  
15 A. Correct.  
16 Q. I'm being clear, it wouldn't have been  
17 recorded by a camera that was on the facility at  
18 the Foxy Lady, correct?  
19 A. Correct.  
20 Q. You don't know anything about  
21 Walgreens cameras or other cameras?  
22 A. No, I don't.  
23 Q. You don't know anything about cameras  
24 that might be on light poles at the parking lot?

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1 A. No idea.  
2 Q. All you know is the incident moved  
3 from a place where it probably could have been  
4 recorded to a place where it wasn't?  
5 A. Correct.  
6 Q. And you know that no one came to you  
7 and asked that the records be preserved?  
8 A. Correct.  
9 Q. At least as far as you can recall?  
10 A. Correct.  
11 Q. Your testimony is if somebody asked  
12 you, you could have cooperated and turned them  
13 over?  
14 A. Absolutely.  
15 Q. If you did that, would you make a  
16 written record of some kind?  
17 A. That would be up to Frank. I don't  
18 know what he'd do.  
19 Q. Has it happened on your watch where  
20 you've been made aware police or somebody have  
21 asked for a video?  
22 A. Yes. One night a few years back  
23 somebody held up the Mobil station next door,  
24 and they came in and asked.

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1 Q. They came in looking for every  
2 videotape in the neighborhood.  
3 A. Yeah.  
4 Q. And you provided it?  
5 A. I believe Frank may have called Dave  
6 our light and sound guy to make a recording.  
7 You have to put a disc in, and they can record  
8 what they need to record onto the disc. But,  
9 again, after 30 days, it would be gone.  
10 Q. Sure. I got that.  
11 It's a relatively easy thing to do if  
12 someone wants to do it?  
13 A. If you know what you're doing, yes.  
14 Q. And do you know the name of any wait  
15 staff that served Dustin Erwin on the evening in  
16 question?  
17 A. No.  
18 Q. Other than it might be --  
19 A. I know who it could have been, but I  
20 don't know who exactly did that.  
21 Q. When you say "who it could have  
22 been" --  
23 A. Based on the schedules.  
24 Q. Does the wait staff have tables, so to

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1 speak?  
2 A. Yes, they have sections. And that's  
3 to monitor how much a person has had.  
4 Q. Let me go back to the cameras for a  
5 minute.  
6 The placement of cameras, has that  
7 changed at all in the last four years?  
8 A. No.  
9 Q. So, again, I said hypothetically if I  
10 went down there and with my own camera and took  
11 a picture, you could see it?  
12 A. Yes.  
13 Q. And it would be in the same exact  
14 place they were on August 10, 2008?  
15 A. Yes.  
16 Q. And there was no intention of moving  
17 them?  
18 A. No. They are getting a little  
19 outdated, and Frank has talked about that.  
20 Q. Is there any written policy about when  
21 to shut somebody off?  
22 A. There's not a written policy, but all  
23 our employees are TIPS certified, and they're  
24 aware of what to look for if a patron is

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<p>1 becoming intoxicated.</p> <p>2 Q. And TIPS stands for Techniques For</p> <p>3 Intervention or Prevention Services, something</p> <p>4 like that?</p> <p>5 A. Something like that.</p> <p>6 Q. T period I period P period S period?</p> <p>7 A. They don't even put the periods on</p> <p>8 there. I've seen the logo. It just says TIPS.</p> <p>9 Q. And when's the last time the TIPS</p> <p>10 people actually came in and gave training?</p> <p>11 A. We've had onsite training, but most of</p> <p>12 the time our employees will go to another</p> <p>13 establishment. You can go on their Web site.</p> <p>14 It gives a list of places and dates for</p> <p>15 training.</p> <p>16 Q. Do you know any TIPS guys personally?</p> <p>17 A. Mike Mark Antonio.</p> <p>18 Q. Have you talked to him about this case</p> <p>19 at all?</p> <p>20 A. No.</p> <p>21 Q. Do you know whether on the evening in</p> <p>22 question any of your employees or the employees</p> <p>23 of the club actually requested that Mr. Erwin</p> <p>24 cease to imbibe alcohol before he was asked to</p>	<p>1 Q. Okay. And you don't know the name of</p> <p>2 anybody that asked you personally to get</p> <p>3 involved?</p> <p>4 A. Involved with?</p> <p>5 Q. With Mr. Erwin's situation that</p> <p>6 evening.</p> <p>7 A. No.</p> <p>8 Q. In other words, you've already</p> <p>9 testified, I'm just cleaning it up, your</p> <p>10 testimony is it was an entertainer, and you</p> <p>11 don't recall who it was.</p> <p>12 A. Several entertainers, yes.</p> <p>13 Q. As you sit here right now, do you know</p> <p>14 the name of any other person employed by Frank's</p> <p>15 or affiliated in any way with Frank's and/or</p> <p>16 Frank's of Plymouth and/or Frank's of Brockton</p> <p>17 and/or the Foxy Lady in any way that saw</p> <p>18 anything that night?</p> <p>19 A. No.</p> <p>20 Q. As far as you know, sitting here</p> <p>21 you're the only person still employed that</p> <p>22 actually saw anything?</p> <p>23 A. I believe so, yes.</p> <p>24 Q. That's your best understanding in good</p>
Page 62	Page 64
<p>1 leave the club?</p> <p>2 A. I had asked after the incident how</p> <p>3 much he had had, and they said he had one or two</p> <p>4 beers. I don't remember the person I asked, but</p> <p>5 I did ask the question.</p> <p>6 Q. Somebody said he had one or two beers?</p> <p>7 A. Yes.</p> <p>8 Q. Who said that?</p> <p>9 A. The waitress, whichever waitress I</p> <p>10 asked. I don't remember who it was.</p> <p>11 Q. So to the best of your understanding,</p> <p>12 he was not shut off?</p> <p>13 A. No.</p> <p>14 Q. That phrase, quote, shut off, unquote,</p> <p>15 has meaning in the vernacular to you?</p> <p>16 A. Yes.</p> <p>17 Q. It means?</p> <p>18 A. Do not serve that person any longer.</p> <p>19 Q. Alcohol?</p> <p>20 A. Alcohol.</p> <p>21 Q. And your testimony is you simply have</p> <p>22 no knowledge one way or the another if Erwin or</p> <p>23 anybody in his group was shut off?</p> <p>24 A. Not that I recall.</p>	<p>1 faith?</p> <p>2 A. Yes.</p> <p>3 Q. Have you ever talked about this matter</p> <p>4 with Mr. McDermott?</p> <p>5 A. No.</p> <p>6 Q. Never at any time?</p> <p>7 A. He did the detail one or two other</p> <p>8 times. I don't remember talking to him about</p> <p>9 it, no.</p> <p>10 Q. Are you aware that there was a trial</p> <p>11 of Mr. Erwin in either the -- probably the</p> <p>12 Brockton District Court?</p> <p>13 A. Yes.</p> <p>14 Q. How did you become aware of that?</p> <p>15 A. Mr. Caswell.</p> <p>16 Q. Were you subpoenaed as a witness?</p> <p>17 A. No.</p> <p>18 Q. Did anybody ever contact you to</p> <p>19 testify?</p> <p>20 A. No.</p> <p>21 Q. Do you have any understanding of the</p> <p>22 outcome?</p> <p>23 A. Yes.</p> <p>24 Q. What did you understand?</p>



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1 A. Mr. Caswell told me that I guess there  
2 weren't any charges brought up against him.  
3 There were charges, but he was not found guilty  
4 of them.  
5 Q. Caswell told you that?  
6 A. Yes.  
7 Q. Apart from talking to Caswell, you  
8 have no actual knowledge?  
9 A. No.  
10 MR. SINSHEIMER: Off the record.  
11 (Discussion off the record)  
12 BY MR. SINSHEIMER:  
13 Q. Let me show you what's already been  
14 marked McDermott Exhibit 2. I know it's not the  
15 best picture, but can you see that?  
16 A. Yes.  
17 Q. Do you recognize it as the club?  
18 A. Yes.  
19 Q. Can you just tell me with your finger  
20 where the cameras were on that picture?  
21 A. Right there (Indicating). You can't  
22 really see it, but I know it's there.  
23 Q. Those little white lines?  
24 A. Yeah. That's the only one on that

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1 side of the building that you're able to see.  
2 Q. Where's the other one?  
3 A. On this (Indicating) same corner on  
4 the other side.  
5 Q. And it's still there, as you say?  
6 A. Yes.  
7 Q. Earlier I asked you to sort of give me  
8 a narrative of what you saw that night, and you  
9 did so?  
10 A. Mm-hmm.  
11 Q. Was it your intention to be complete?  
12 A. Yes.  
13 Q. Whether I asked you or not, is there  
14 anything else about that evening you can recall  
15 that you haven't testified to in one way or  
16 another?  
17 A. No.  
18 Q. So, in other words, I've asked the  
19 questions that have elicited from you your good  
20 faith best memory of everything you saw that  
21 night?  
22 A. Yes.  
23 Q. Nothing else of import that you can  
24 recall?

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1 A. No.  
2 Q. You understand that there's a lawsuit?  
3 A. Yes.  
4 Q. And you understand that you are here  
5 on behalf of the corporation in part to tell us  
6 everything that could help in the defense of  
7 that lawsuit?  
8 A. Yes.  
9 MR. SINSHEIMER: I don't have any  
10 further questions.  
11  
12 CROSS-EXAMINATION  
13 BY MR. PHAFF:  
14 Q. Mr. Ferraro, my name is Stephen Phaff.  
15 I represent the Brockton defendants, and I have  
16 a few questions for you, if you don't mind.  
17 A. Okay.  
18 Q. Mr. Sinsheimer asked you if you filled  
19 out a statement with respect to this case, and  
20 your answer was that you have not, right?  
21 A. Correct, except I remember them taking  
22 my name down that evening.  
23 Q. Okay. Did you give an oral statement  
24 that might have been recorded in any way?

1 A. No.  
2 Q. And how many times did you have to  
3 speak to the plaintiff in terms of, and this is  
4 my term, warning him before you actually --  
5 A. Two or threes times.  
6 Q. And was McDermott the only detail  
7 officer there that might?  
8 A. Yes.  
9 Q. And was he accompanying you when you  
10 spoke to the plaintiff on either of the two or  
11 three occasions?  
12 A. No, he was not.  
13 Q. Did I hear you correctly in terms of  
14 your testimony that after either the first or  
15 the second time you went to speak with him, you  
16 actually saw him physically throw coins at the  
17 girls?  
18 A. Yes.  
19 Q. That's not allowed, is it?  
20 A. No, especially as hard as he was  
21 throwing them.  
22 Q. So after you saw that, you then took  
23 it upon yourself to ask him to leave; is that  
24 correct?

<p style="text-align: right;">Page 69</p> <p>1 A. Yes. The first time I did not, but I 2 did warn him, and it did happen again. 3 Q. And you saw him do it? 4 A. The second time I did see him, yes. 5 Q. And after you saw him do that, do I 6 also have it straight that one of the girls 7 actually complained to you? 8 A. Originally, yes, and that's when I 9 became aware of the coin thing. 10 Q. And then you saw him throw the coins 11 and asked him to leave. But was there 12 somebody -- after you saw him throw the coins, 13 was there a female entertainer who made a 14 complaint thereafter and you saw him? 15 A. No, I saw it. 16 Q. Where was McDermott when you asked the 17 plaintiff to leave? 18 A. Near the register. 19 Q. The register would be just inside the 20 main building and just -- just so I understand 21 it -- 22 A. You walk into the building. It's a 23 front foyer, empty space, and then can you walk 24 in the next set of doors, it's a little</p>	<p style="text-align: right;">Page 71</p> <p>1 A. I believe he was. 2 Q. Okay. And so Erwin walked past the 3 register into the empty vestibule and then out 4 the door? 5 A. Yes. 6 Q. Okay. What did McDermott do at that 7 point? 8 A. Officer McDermott and myself were just 9 standing in the empty space, just conversing, 10 and then he began to do what he was doing. 11 Q. Okay. And he did that through the 12 outside doors from the outside? 13 A. Yes. 14 Q. And what did you see McDermott do at 15 that point? 16 A. We basically just looked at each 17 other. He left fine, and I don't know what set 18 him off outside. And that's when he began fuck 19 you, screaming in the door. And we just looked 20 at each other. And Mr. McDermott went to the 21 door and asked him to leave the property. 22 Q. Did McDermott go outside? 23 A. No. He propped the door open and told 24 him to his face.</p>
<p style="text-align: right;">Page 70</p> <p>1 vestibule with the register, and that's where 2 the floor host will stand and take IDs. 3 Q. And that's where McDermott was? 4 A. Yes. 5 Q. So when you walked out with the 6 plaintiff, how far did you get before the two of 7 you separated? 8 A. I walked right behind him. 9 Mr. McDermott was watching. He walked through 10 the first set of doors, through the second set 11 of doors and to the outside of the building. 12 Q. Did you have to tell McDermott what 13 you were doing? 14 A. I did tell him that I was going to be 15 asking somebody to leave. 16 Q. And you did that before you -- 17 A. Before I walked into the building. 18 Q. You did that before you came over to 19 Mr. Erwin, you told McDermott what you were 20 about to do? 21 A. Yes. 22 Q. Okay. So it's your understanding then 23 that McDermott was watching you as you spoke to 24 Erwin, and the two of you started to walk out?</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. At this point could you see customers 2 entering and exiting? 3 A. I don't believe at that time, no. 4 Q. Was the vestibule area where you were 5 standing and where McDermott was just occupied 6 by the two of you? 7 A. Yes. 8 Q. Okay. And after McDermott then spoke 9 to the plaintiff, what happened next? 10 A. He came back in. 11 Q. He being? 12 A. Mr. McDermott came back in. 13 Q. Okay. 14 A. At that point that's when Mr. Erwin 15 began banging on the glass really hard. We 16 really thought he was going to break the glass, 17 that's how hard he was pounding the glass. 18 Mr. McDermott went back to the door 19 again and opening the door, and that's when he 20 began saying, Fuck you, tough guy. What are you 21 going to do about it, tough guy? Come on, come 22 on. 23 Q. And you could see and hear it? 24 A. See and hear it.</p>

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1 Q. You had not left the vestibule area?  
2 A. I don't get involved when the police  
3 get involved. That's it for me.  
4 Q. And what did McDermott do?  
5 A. Again, he warned him again to leave  
6 the property, or I remember him saying you'll be  
7 spending the night in jail.  
8 Q. Okay.  
9 A. And he came back in, and we were both  
10 hoping -- the last thing they want to do --  
11 MR. SINSHEIMER: Objection. Move  
12 to strike.  
13 MR. BERMAN: Move to strike.  
14 BY MR. PHAFF:  
15 Q. Go ahead. Did McDermott come back in  
16 the vestibule again?  
17 A. Yes, several times back and forth.  
18 Q. And then he finally went out the last  
19 time?  
20 A. Then there were customers coming in  
21 complaining what he was saying. We could hear  
22 him yelling, Fuck this place. This place sucks.  
23 And at that point Mr. McDermott went  
24 back out.

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1 Q. About how long in time would you say  
2 was the period from the time that you escorted  
3 Mr. Erwin out until Officer McDermott went out  
4 the outside doors for the last time?  
5 A. 10 to 15 minutes.  
6 Q. And during this you could hear and see  
7 the plaintiff and his actions?  
8 A. Yes.  
9 Q. And customers at some point were  
10 coming in and complaining?  
11 A. Yes.  
12 Q. All right. And when you saw  
13 Mr. McDermott get -- Officer McDermott go out  
14 for the last time, tell me what happened.  
15 A. I knew he was really upset at that  
16 time because he had been out there so many  
17 times. And he escorted him down the ramp again  
18 telling him to get off the property or he was  
19 going to be arrested if he didn't.  
20 Mr. Erwin still continued on his rant.  
21 They got down to the end of the ramp, and they  
22 were walking towards Walgreens.  
23 Q. Where were you at this point?  
24 A. On the top of the ramp watching.

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1 Q. So you're outside the door watching?  
2 A. Yes.  
3 And then I remember Mr. McDermott  
4 saying, Listen, I'm not going to tell you again.  
5 And Mr. Erwin wound up and struck his arm very  
6 hard, and the next thing, they were rolling on  
7 the ground.  
8 Q. Do you know if McDermott had worked  
9 there as a detail officer prior to this?  
10 A. Yes.  
11 Q. Had you ever had any complaints from  
12 any customers whatsoever about McDermott's  
13 actions?  
14 A. Never.  
15 Q. Has he worked there since?  
16 A. Yes.  
17 Q. Same question, any complaints from any  
18 customers?  
19 A. No.  
20 Q. None?  
21 A. No.  
22 MR. PHAFF: That's all I have.  
23 MR. SINSHEIMER: I have a  
24 follow-up. First, do you have any, sir?

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1 MR. BERMAN: No, I don't have any  
2 questions.  
3  
4 REDIRECT EXAMINATION  
5 BY MR. SINSHEIMER:  
6 Q. Mr. Phaff asked you some more  
7 questions about the allegation that Mr. Erwin  
8 was throwing coins.  
9 A. Mm-hmm.  
10 Q. Did anybody ever present to you with  
11 any kind of bruises or cuts or anything like  
12 that?  
13 A. No.  
14 Q. I believe you said in response to some  
15 of Mr. Phaff's questions that there was as much  
16 as 10 to 15 minutes between Mr. Erwin first  
17 being asked to leave -- I'm going to withdraw.  
18 Let me try again.  
19 He was actually outside for 10 or 15  
20 minutes, is that your testimony?  
21 A. He had asked -- from the time he was  
22 asked to leave until the final time  
23 Mr. McDermott went out and, yes, sir, 10 to 15  
24 minutes.

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<p>1 Q. During which time he was yelling?</p> <p>2 A. Yes.</p> <p>3 Q. And is it your testimony that none of</p> <p>4 his companions went outside during that 10- or</p> <p>5 15-minute period?</p> <p>6 A. No, one individual did.</p> <p>7 Q. But only one?</p> <p>8 A. Yes, just one.</p> <p>9 Q. How many of his companions were out</p> <p>10 there when Mr. McDermott -- strike it.</p> <p>11 How many of Mr. Erwin's companions</p> <p>12 were outside when the incident became physical?</p> <p>13 A. To my knowledge, zero.</p> <p>14 Q. So your testimony is that Mr. Erwin</p> <p>15 struck Mr. McDermott's arm before any of the</p> <p>16 friends of his came out?</p> <p>17 A. Yes.</p> <p>18 Q. And prior to that, Mr. Erwin was</p> <p>19 outdoors alone for roughly 10 to 15 minutes?</p> <p>20 A. Mr. Erwin?</p> <p>21 Q. Yes.</p> <p>22 A. Yes.</p> <p>23 Q. During which time he was yelling the</p> <p>24 whole time?</p>	<p>1 wouldn't have seen them, but not to the left</p> <p>2 side.</p> <p>3 Q. To the best of your recollection, no</p> <p>4 one left through that particular door?</p> <p>5 A. Correct.</p> <p>6 Q. Okay. And that includes, again, his</p> <p>7 own friends, his own companions?</p> <p>8 A. Correct.</p> <p>9 Q. And McDermott was really upset when he</p> <p>10 went out the last time?</p> <p>11 A. You can only ask somebody so many</p> <p>12 times, and he was a little more upset, yes, than</p> <p>13 he was at the beginning.</p> <p>14 Q. I think you said that to Mr. Phaff.</p> <p>15 I'm just confirming it. Is that true?</p> <p>16 A. Yes.</p> <p>17 Q. How did he manifest that?</p> <p>18 A. His voice got a little louder.</p> <p>19 Q. I'm going to take care of this once</p> <p>20 and for all?</p> <p>21 A. He --</p> <p>22 MR. PHAFF: Objection.</p> <p>23 A. He didn't say anything like that.</p> <p>24 MR. SINSHEIMER: That's all I have.</p>
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<p>1 A. Yes.</p> <p>2 Q. Or within sight of where the cameras</p> <p>3 would, if they were working properly, would have</p> <p>4 been able to take it down?</p> <p>5 A. Until the point where they walked over</p> <p>6 on to Walgreens property, yes.</p> <p>7 Q. Which was near the end of the whole</p> <p>8 thing?</p> <p>9 A. Yes.</p> <p>10 Q. So I was correct about the 10 or 15</p> <p>11 minutes he was within sight of the cameras, give</p> <p>12 or take?</p> <p>13 A. Yes.</p> <p>14 Q. And you were testifying in response to</p> <p>15 Mr. Phaff's questions that patrons came in and</p> <p>16 out during this time?</p> <p>17 A. I don't remember anybody leaving.</p> <p>18 Q. So your testimony is that the best you</p> <p>19 can recall, Erwin was the only one who left</p> <p>20 between the time that he physically walked out</p> <p>21 the door and the time that McDermott came out</p> <p>22 the last time?</p> <p>23 A. To the best of my knowledge, yes.</p> <p>24 Somebody could have left to the right side and I</p>	<p>1 MR. PHAFF: I'm good.</p> <p>2 MR. BERMAN: No questions.</p> <p>3 (Whereupon the deposition was</p> <p>4 concluded at 11:26 a.m.)</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p>

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1       ATTACH TO DEPOSITION OF: John Ferraro  
2       CASE: Erwin v. McDermott  
3       DATE TAKEN: August 21, 2012  
4       ERRATA SHEET

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7       Page Line           Correction/Reason

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16 \_\_\_\_\_

17 I have read the foregoing transcript of my  
18 deposition, and except for any corrections or  
19 changes noted above, I hereby subscribe to the  
20 transcript as an accurate record of the  
21 statements made by me.

22 Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

23 \_\_\_\_\_  
24       JOHN FERRARO

1       COMMONWEALTH OF MASSACHUSETTS)  
2       SUFFOLK, SS.                               )  
3  
4       I, Daria L. Romano, RPR, CRR and Notary  
5 Public in and for the Commonwealth of  
6 Massachusetts, do hereby certify that there came  
7 before me on the 21st day of August, 2012, at  
8 10:13 a.m., the person hereinbefore named was  
9 duly sworn by me and that such deposition is a  
10 true record of the testimony given by the  
11 witness.  
12       I further certify that I am neither related  
13 to nor employed by any of the parties or counsel  
14 to this action, nor am I financially interested  
15 in the outcome of this action.  
16       In witness whereof, I have hereunto set my  
17 hand and seal this 24th day of August, 2012.  
18  
19  
20  
21  
22  
23  
24

\_\_\_\_\_  
Notary Public  
My Commission Expires  
March 15, 2013



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